

IN THE UTAH COURT OF APPEALS

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| Tyler R. Johnson,           | ) | MEMORANDUM DECISION            |
|                             | ) | (Not For Official Publication) |
| Petitioner,                 | ) |                                |
|                             | ) | Case No. 20090003-CA           |
| v.                          | ) |                                |
|                             | ) |                                |
| Department of Workforce     | ) | F I L E D                      |
| Services, Workforce Appeals | ) | (December 3, 2009)             |
| Board,                      | ) |                                |
|                             | ) | 2009 UT App 362                |
| Respondent.                 | ) |                                |

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Original Proceeding in this Court

Attorneys: Tyler R. Johnson, Harrisville, Petitioner Pro Se  
            Suzan Pixton, Salt Lake City, for Respondent

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Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Tyler R. Johnson petitions for judicial review of the final decision of the Workforce Appeals Board (the Board). Johnson asserts that the Board erred in failing to award him backdated unemployment benefits. We affirm.

"An agency's findings of fact are . . . accorded substantial deference and will not be overturned if based on substantial evidence, even if another conclusion from the evidence is permissible." Hurley v. Board of Review of Indus. Comm'n, 767 P.2d 524, 526-27 (Utah 1988). Further, we defer to the Board's determinations concerning the credibility of witnesses and conflicting evidence because it is in the best position to judge that evidence. See Questar Pipeline Co. v. Utah State Tax Comm'n, 850 P.2d 1175, 1178 (Utah 1993); Grace Drilling v. Board of Review, 776 P.2d 63, 68 (Utah Ct. App. 1989).

Johnson argues that he should have been entitled to backdated unemployment benefits because an employee of the Department of Workforce Services told Johnson that he did not need to continue filing weekly claims while he appealed the initial determination that he was not entitled to benefits. However, the Board found that Johnson's testimony that he

received incorrect information was not credible. In so doing, the Board found that Johnson had received both a "Claimant Guide" and an "Appeal Brochure" during the administrative process, both of which instructed a claimant to file weekly claims even if his original claim was denied. Those documents also explained the consequences of failing to file the weekly claims. Further, Johnson admitted that he received additional correspondence from the Department containing similar language. Finally, the Board found that the Department's employees "know that claimants must file weekly claims during the process of appeal or benefits will be denied even if the original decision is reversed." Thus, the Board did not believe Johnson's testimony that he was told not to file the weekly claims. Because we must defer to the Board's determinations of credibility and because its findings are supported by the record, we must uphold its conclusions based upon those factual determinations. See Questar Pipeline Co., 850 P.2d at 1178.

Affirmed.

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Russell W. Bench, Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge